

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

MARK CONRAD WOLF,
Debtor.

Case No. 21-11757-CMA

EDMUND J. WOOD, solely in his capacity as
Chapter 7 Trustee for MARK CONRAD
WOLF,
Plaintiff.

Adversary Proceeding No. _____

vs.

MARK CONRAD WOLF; the STATE OF
WASHINGTON; the INTERNAL
REVENUE SERVICE; BANK OF
AMERICA, N.A.; LARRY A. JOHNSON;
WASHINGTON STATE DEBT
ACQUISITION LLC, a Washington limited
liability company, as successor-in-interest to
FD 2011-C1 HOOD RETAIL, LLC, an
Oregon limited liability company; and
RENTON COLLECTIONS, INC., a
Washington corporation,

Defendants.

COMPLAINT FOR (1) DECLARATORY
JUDGMENT, (2) JUDGMENT
AVOIDING AND PRESERVING AND
RECOVERING IRS LIENS SECURING
NON-PECUNIARY TAX PENALTIES
AND INTEREST ON PENALTIES, AND
(3) RELATED RELIEF

1 Plaintiff Edmund J. Wood, solely in his capacity as the Chapter 7 trustee for the
2 bankruptcy estate of Mark Conrad Wolf, on his own knowledge or on information and belief,
3 alleges as follows.

4 I. INTRODUCTION

5 This complaint concerns the Debtor's improved real property commonly known
6 as 4032 138th Avenue SE, Bellevue, Washington 98006. The Debtor claims a homestead
7 exemption in the Bellevue Residence (defined in paragraph 9 below) under the recently amended
8 Washington homestead act, RCW 6.13 *et. Seq.* (the "Homestead Act"). Under a recent
9 amendment, RCW 6.13.070(2) provides that in a bankruptcy case, if the requirements are
10 otherwise met, a debtor's "right to possession and interests of no monetary value" in the
11 homestead property are exempt. This complaint asks the court to determine whether the
12 Bellevue Residence is property of the estate under 11 U.S.C. § 541, notwithstanding the
13 amendments to the Homestead Act, particularly where, as here, there are IRS liens that secure
14 significant liens for penalties and interest on penalties that may be avoided pursuant to
15 11 U.S.C. § 724(a) and recovered and preserved for the estate and its creditors pursuant to
16 11 U.S.C. §§ 550 and 551. This complaint seeks the resolution of certain related matters, so that
17 if the requested relief is granted, the Trustee can market and sell the Bellevue Residence for the
18 benefit of the unsecured creditors of the estate.

19 Specifically, the Trustee seeks determination of the following:

- 20 1. That the Bellevue Residence is property of the estate under 11 U.S.C. §
21 541, notwithstanding recent amendments to RCW 6.13 *et seq.*
- 22 2. Alternatively, that the Homestead Act as amended is void and
23 unenforceable by reason of Article VI, paragraph 2 of the United States Constitution (the
24 "Supremacy Clause") to the extent it would deprive the Trustee of his rights to administer the
25 Bellevue Residence and to avoid, recover, and preserve the IRS Liens (defined in paragraph 16.4
26

below) as to penalties and interest on penalties for the benefit of the estate and the Debtor's unsecured creditors pursuant to 11 U.S.C. § 724(a) and 11 U.S.C. §§ 550 and 551.

3. The nature and amount of the Debtor's homestead exemption.

4. The extent, validity, and priority of liens and interests in the Bellevue Residence, including the priority and amount of the IRS Liens for penalties and interest on penalties.

5. Judgment that the Trustee may avoid the IRS Liens as to penalties and interest on penalties pursuant to 11 U.S.C. § 724(a) with the avoided liens recovered for the benefit of the estate under 11 U.S.C. § 550.

6. Judgment that the Trustee may avoid the IRS Liens as to penalties and interest on penalties pursuant to 11 U.S.C. § 724(a) with the avoided liens preserved for the benefit of the estate under 11 U.S.C. § 551.

7. Judgment that the disbursement of proceeds attributable to the IRS Liens, other than those proceeds from liens avoided under 11 U.S.C. § 724(a) and recovered and preserved under 11 U.S.C. §§ 550 and 551, shall be made pursuant to 11 U.S.C. § 724(b).

II. PARTIES

1. Plaintiff. Edmund J. Wood, solely in his capacity as the Chapter 7 trustee for the bankruptcy estate of Mark Conrad Wolf ("Wood" or "Trustee"), is the plaintiff in this adversary proceeding.

2. Defendants.

2.1 Mark Conrad Wolf ("Wolf" or "Debtor") is the debtor in the chapter 7 bankruptcy filed September 20, 2021, in the United States Bankruptcy Court for the Western District of Washington, at Seattle, under case number 21-11757-CMA.

2.2 The State of Washington.

2.3 The Internal Revenue Service ("IRS") is the tax collection agency for the United States of America and administers the Internal Revenue Code enacted by Congress.

1 was appointed as the Chapter 7 trustee for Wolf on the Petition Date and has acted in that
2 capacity since then.

3 9. Among the assets of the estate is a parcel of improved real property legally
4 described as

5 A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST
6 QUARTER OF SECTION 15, TOWNSHIP 24 NORTH, RANGE 5 EAST,
W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

7 COMMENCING AT THE NORTHWEST CORNER OF LOT 14 OF EAST
8 VIEW HOMES ADDITION, ACCORDING TO PLAT RECORDED IN
9 VOLUME 53 OF PLATS, AT PAGE(S) 39, IN KING COUNTY,
WASHINGTON;

10 THENCE SOUTH 00°26'00" WEST ALONG THE WEST LINE OF SAID
PLAT 150 FEET;

11 THENCE NORTH 88°47'53" WEST 130.33 FEET;

12 THENCE SOUTH 00°24'18" WEST 146 FEET TO THE TRUE POINT OF
13 BEGINNING;

14 THENCE NORTH 88°47'53" WEST 160.28 FEET, MORE OR LESS, TO THE
EASTERLY MARGIN OF 138TH AVENUE SOUTHEAST;

15 THENCE SOUTHERLY ALONG SAID EASTERLY MARGIN 74.23 FEET;

16 THENCE SOUTH 89°37'25" EAST 160.24 FEET, MORE OR LESS, TO A
17 POINT WHICH BEARS SOUTH 0°24'18" WEST AND DISTANT 72.40 FEET
FROM THE TRUE POINT OF BEGINNING;

18 THENCE NORTH 0°24'18" WEST AND DISTANT 72.40 FEET FROM THE
19 TRUE POINT OF BEGINNING;

20 THENCE NORTH 0°24'18" EAST 72.40 FEET TO THE TRUE POINT OF
BEGINNING.

21 SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

22 and commonly known as 4032 138th Avenue SE, Bellevue, Washington 98006 (the "Bellevue
23 Residence").

24 10. As of October 1, 2021, title to the Bellevue Residence was vested in Mark
25 C. Wolf, as his separate estate.

1 11. The Debtor scheduled the value of the Bellevue Residence as \$800,000.
2 Bankruptcy Dkt. # 1, at 11. For the tax year 2022, King County appraised the value of the
3 Bellevue Residence as \$784,000, comprised of \$645,000 for the land and \$139,000 for the
4 improvements. Wood's real estate agent, Chad Tharp, viewed the Bellevue Residence and
5 estimated its fair market value as \$1,395,000. Declaration of Chad Tharp, ¶ 3.

6 12. Debtor claimed \$729,600 of his interest in the Bellevue Residence as
7 exempt under RCW 6.13.010, 6.13.020, and 6.13.030. Bankruptcy Dkt. # 1, at 17.

8 13. In 2021, the state of Washington made changes to its Homestead Act,
9 RCW 6.13 *et seq.*, finding that the changes "are necessary to modernize the law and to address
10 the case of *Wilson v. Rigby*, 909 F.3d 306 (2018) and to adopt the reasoning in *In re Good*,
11 588 B.R. 573 (Bankr. W.D. Wash 2018)." RCW 6.13.010, Notes: Findings-2021 c 290.

12 14. Under RCW 6.13.030, as amended, the homestead exemption amount is
13 the greater of \$125,000 or the county's median sale price of a single-family home in the
14 preceding calendar year, using data from the Washington Center for Real Estate Research. In
15 King County, the annual median home price for 2020 was \$729,600
16 [<https://wcrer.be.uw.edu/archived-reports/>].

17 15. RCW 6.13.070(2) now provides as follows:
18 In a bankruptcy case, the debtor's exemption shall be determined on the date the
19 bankruptcy petition is filed. If the value of the debtor's interest in homestead
20 property on the petition date is less than or equal to the amount that can be
21 exempted under RCW 6.13.030, then the debtor's entire interest in the property,
22 including the debtor's right to possession and interests of no monetary value, is
exempt. Any appreciation in the value of the debtor's exempt interest in the
property during the bankruptcy case is also exempt, even if in excess of the
amounts in RCW 6.13.030(1).

23 16. The Bellevue Residence is encumbered by various liens, approximately as
24 follows, with the total of stated lien amounts greatly exceeding the estimated fair market value,
25 as more particularly described in the Title Commitment:
26

- 1 16.1 Lien of Real Estate Excise Tax and other taxes upon sale of said premises,
2 or transfer of a controlling interest, if unpaid;
- 3 16.2 Deed of Trust in the principal amount of \$207,433, granted by Mark C.
4 Wolf, as his sole and separate property, to Bank of America, N.A., dated
 October 20, 2010, and recorded October 27, 2010, under King County
 Recording Number 20101027000717 (the “B of A DOT”);
- 5 16.3 Deed of Trust in the principal amount of \$106,000, granted by Mark C.
6 Wolf to Larry A. Johnson, dated March 18, 2011, and recorded March 25,
7 2011, under King County Recording Number 20110325000511 (the
 “Johnson DOT”);
- 8 16.4 Tax liens securing obligations to the IRS in the total amount of
9 \$1,433,444.16, including liens for non-pecuniary penalties and interest on
 penalties in the total amount of \$440,966.53, as of the Petition Date
 (collectively, the “IRS Liens”), as follows:
- 10 16.4.1 Tax lien in favor of the United States of America in the original
11 amount of \$99,363.50¹, dated December 19, 2014, and recorded
 December 29, 2014, under King County Recording Number
12 20141229000570 (the “2014 IRS Lien”);
- 13 16.4.2 Tax lien in favor of the United States of America in the original
14 amount of \$29,015.97², dated February 28, 2019, and recorded
 March 12, 2019, under King County Recording Number
 20190312000844; (“2019 IRS Lien”);
- 15 16.4.3 Tax lien in favor of the United States of America in the original
16 amount of \$1,196,932.52³, dated December 24, 2019, and recorded
 January 7, 2020, under King County Recording Number
17 20200107000610 (“2020 IRS Lien”); and
- 18 16.4.4 Tax lien in favor of the United States of America in the original
19 amount of \$46,457.35⁴, dated March 9, 2021, and recorded March
 19, 2021, under King County Recording Number 20210319000694
 (the “IRS 2021 Lien”).

21

¹ As of the Petition Date, the 2014 IRS Lien secured a claim in the total amount of \$68,379.85, of which \$27,856.02
22 was for penalties and interest on penalties within the definition of 11 U.S.C. §§ 724(a) and 726(a)(4).

23 ² As of the Petition Date, the 2019 IRS Lien secured a claim in the total amount of \$37,775.07, of which \$11,104.88
24 was for penalties and interest on penalties within the definition of 11 U.S.C. §§ 724(a) and 726(a)(4).

25 ³ As of the Petition Date, the 2020 IRS Lien secured a claim in the total amount of \$1,279,513.49, of which
26 approximately \$387,367.63 was for penalties and interest on penalties within the definition of
 11 U.S.C. §§ 724(a) and 726(a)(4).

⁴ As of the Petition Date, the IRS 2021 Lien secured a claim in the total amount of \$47,775.75 of which \$14,638.00
 was for penalties and interest on penalties within the definition of 11 U.S.C. §§ 724(a) and 726(a)(4).

1 16.5 Judgment against Mark C. Wolf and Ryan D. Lentz, jointly and severally,
2 originally entered in the Circuit County of the State of Oregon for Marion
3 County, under case number 11C25243, in the total amount of
4 \$3,396,667.95 plus attorneys' fees and costs, and domesticated May 20,
5 2013, in King County Superior Court under case number 13-2-20260-3
 SEA, in favor of FD 2011-C1 Hood Retail, LLC, last assigned to
 Washington State Debt Acquisition LLC and recorded July 23, 2021,
 under King County Recording Number 20210723002395.and
 20200218001586; and

6 16.6 Judgment against Mark Wolf individually and in favor of Renton
7 Collections, Inc., in the original amount of \$2,401.40, entered in King
8 County District Court on May 6, 2014, and transcribed to King County
 Superior Court under case number 15-2-15743-4 SEA on June 30, 2015,
 in the total amount of \$2,774.40.

9 **V. LEGAL AUTHORITY**

10 17. 11 U.S.C. § 541(a) provides that

11 The commencement of a case under section 301 302, or 303 of this title creates an
12 estate. Such estate is comprised of all the following property, wherever located
 and by whomever held:

13 (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or
14 equitable interests of the debtor in property as of the commencement of the
 case.

15 ...

16 (3) Any interest in property that the trustee recovers under 329(b), 363(n),
17 543, 550, 553, or 723 of this title.

18 (4) Any interest in property preserved for the benefit of or ordered transferred
19 to the estate under section 510(c) or 551 of this title.

20 ...

21 (7) Any interest in property that the estate acquires after the commencement
 of the case.

22 18. 11 U.S.C. § 724(a) provides that "[t]he trustee may avoid a lien that
23 secures a claim of a kind specified in section 726(a)(4) of this title."

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1 19. 11 U.S.C. § 726(a)(4) provides that:

2 Except as provided in section 510 of this title, property of the estate shall be
3 distributed—

4 ...

5 (4) fourth, in payment of any allowed claim, whether secured or unsecured,
6 for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive
7 damages, arising before the earlier of the order for relief or the appointment of
8 a trustee, to the extent that such fine, penalty, forfeiture, or damages are not
9 compensation for actual pecuniary loss suffered by the holder of such claim;

10 20. 11 U.S.C. § 550(a) provides that

11 Except as otherwise provided in this section, to the extent that a transfer is
12 avoided under section ... 724(a) of this title, the trustee may recover, for the
13 benefit of the estate, the property transferred, or, if the court so orders, the value
14 of such property, from—

15 (1) the initial transferee of such transfer or the entity for whose benefit such
16 transfer was made; or

17 (2) any immediate or mediate transferee of such initial transferee.

18 21. 11 U.S.C. § 551 provides that “[a]ny transfer avoided under section ...
19 724(a) of this title ... is preserved for the benefit of the estate but only with respect to property of
20 the estate.”

21 22. 11 U.S.C. § 724(b) governs the order of distribution of property and the
22 proceeds of property subject to a lien that secures an allowed claim for a tax that is not avoidable
23 “under this title” and in which the estate has an interest.

24 23. 11 U.S.C. § 522(c)(2)(B) provides that a debtor may not avoid a properly
25 filed tax lien.

26 24. Article VI, Paragraph 2 of the United States Constitution, commonly
referred to as the “Supremacy Clause,” provides that

 This Constitution, and the Laws of the United States which shall be made in
Pursuance thereof; and all Treaties made, or which shall be made, under the
Authority of the United States, shall be the supreme Law of the Land; and the
Judges in every State shall be bound thereby, any Thing in the Constitution or
Laws of any State to the Contrary notwithstanding.

1 25. Article I, Section 8, of the United States Constitution, commonly referred
2 to as the “Uniformity Clause,” states in part that “[t]he Congress shall have Power ... To
3 establish ... uniform Laws on the subject of Bankruptcies throughout the United States.”

4 **VI. FIRST CAUSE OF ACTION**

5 A. For declaratory judgment determining that the Bellevue Residence is an asset of the
6 estate under 11 U.S.C. § 541

7 26. Plaintiff repeats and realleges paragraphs 1 through 25 above.

8 27. Under 11 U.S.C. § 541(a)(1), the property of the estate includes all legal
9 or equitable interest of the Debtor in property as of the Petition Date.

10 28. Under 11 U.S.C. § 541(a)(3), property of the estate includes any interest in
11 property that the Trustee recovers under section 550.

12 29. Under 11 U.S.C. § 541(a)(4), property of the estate also includes “[a]ny
13 interest in property preserved for the benefit of or ordered transferred to the estate under
14 section...551 of this title.”

15 30. The IRS Liens described in paragraph 16 above may be avoided to the
16 extent they are liens for tax penalties and interest on penalties. 11 U.S.C. § 724(a) and
17 11 U.S.C. 726(a)(4). Such avoided liens are automatically preserved for the benefit of the estate
18 under 11 U.S.C. § 551 and may further be recovered by the trustee under 11 U.S.C. § 550.

19 31 The Homestead Act, as amended, including RCW 6.13.070(2), as
20 amended, does not change the application of 11 U.S.C. § 541(a) to the Bellevue Residence. The
21 Bellevue Residence is property of the estate.

22 32. Alternatively, property of the estate includes the liens described in
23 paragraph 16 above that are avoided under 11 U.S.C. § 724(a) and recovered under
24 11 U.S.C. § 550, as provided by 11 U.S.C. § 541(a)(3).

1 33. Alternatively, property of the estate includes the liens described in
2 paragraph 16 above that are avoided under 11 U.S.C. § 724(a) and preserved under
3 11 U.S.C. § 551, as provided by 11 U.S.C. § 541(a)(4).

4 **VII. SECOND CAUSE OF ACTION**

5 A. For declaratory judgment determining that to the extent RCW 6.13.070, as amended,
6 violates the Supremacy Clause, it is void to that extent

7 34. Plaintiff repeats and realleges paragraphs 1 through 33 above.

8 35. 11 U.S.C. § 724(a) and 11 U.S.C. §§ 550 and 551 together embody the
9 latest iteration of a clear and long-standing federal policy that creditors should not suffer from
10 non-pecuniary tax penalties or interest on tax penalties in a debtor's bankruptcy.

11 36. To the extent that RCW 6.13.070(2), as amended, would prevent the
12 Trustee from using 11 U.S.C. §§ 724 and 551 for the benefit of the estate and its creditors, it
13 violates that long-standing federal policy, and is void and unenforceable by reason of the
14 Supremacy Clause. *See United States v. Rodgers*, 461 U.S. 677, 701 (1983) (the Supremacy
15 Clause of the Constitution renders state homestead exemptions ineffective against a federal tax
16 lien).

17 **VIII. THIRD CAUSE OF ACTION**

18 A. For declaratory judgment determining that to the extent RCW 6.13.070, as amended,
19 prevents the Bellevue Residence from being an asset of the estate it violates the
 Uniformity Clause and is void to that extent

20 37. Plaintiff repeats and realleges paragraphs 1 through 36 above.

21 38. To the extent that the amendments to the Washington Homestead Act,
22 including RCW 6.13.070(2), as amended, would prevent the Trustee from using
23 11 U.S.C. §§ 724(a), 550 and 551 for the benefit of the estate and its creditors, it violates the
24 Uniformity Clause because it would result in disuniform applications of federal policy among the
25 several states, and is void and unenforceable.

1 **IX. FOURTH CAUSE OF ACTION**

2 A. For declaratory judgment determining the extent, validity, and priority of liens against the
3 Bellevue Residence

4 39. Plaintiff repeats and realleges paragraphs 1 through 38 above.

5 40. Plaintiff requests that the court determine the extent, validity and priority
6 of liens against the Bellevue Residence.

7 **X. FIFTH CAUSE OF ACTION**

8 A. For judgment avoiding the IRS Liens for tax penalties and interest on tax penalties under
9 11 U.S.C. § 724(a) and recovering the avoided IRS Liens or their value for the benefit of
10 the estate under 11 U.S.C. § 550

11 41. Plaintiff repeats and realleges paragraphs 1 through 40 above.

12 42. Plaintiff is entitled to an order avoiding the IRS Liens to the extent they
13 secure nonpecuniary penalties and interest on penalties under 11 U.S.C. § 724(a).

14 43. To the extent the IRS Liens against the Bellevue Residence are avoided
15 pursuant to 11 U.S.C. § 724(a), Plaintiff is entitled to an order recovering the avoided IRS Liens
16 or their value for the benefit of the estate and its creditors pursuant to 11 U.S.C. § 550 and
17 11 U.S.C. § 541(a)(3).

18 **XI. SIXTH CAUSE OF ACTION**

19 A. For judgment avoiding the IRS Liens for tax penalties and interest on tax penalties under
20 11 U.S.C. § 724(a) and preserving the avoided IRS Liens for the benefit of the estate
21 under 11 U.S.C. § 551

22 44. Plaintiff repeats and realleges paragraphs 1 through 43 above.

23 45. Plaintiff is entitled to an order avoiding the IRS Liens to the extent they
24 secure nonpecuniary penalties and interest on penalties under 11 U.S.C. § 724(a).

25 46. To the extent the IRS Liens against the Bellevue Residence are avoided
26 pursuant to 11 U.S.C. § 724(a), the avoided IRS Liens should be preserved for the benefit of the
estate and its creditors pursuant to 11 U.S.C. §§ 551 and 541(a)(4).

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XII. SEVENTH CAUSE OF ACTION

A. For judgment that on sale of the Bellevue Residence, the proceeds of sale subject to the non-avoidable portions of the IRS Liens should be disbursed pursuant to 11 U.S.C. § 724(b)

47. Plaintiff repeats and realleges paragraph 1 through 46 above.

48. On the Trustee's sale of the Bellevue Residence, the proceeds of sale subject to the non-avoidable portions of the IRS Liens should be disbursed pursuant to 11 U.S.C. § 724(b).

XIII. RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. Determining that the Bellevue Residence is an asset of the estate under 11 U.S.C. §§ 541(a)(1), (3), and (4).

2. Determining that to the extent the Washington Homestead Act, as amended, including but not limited to RCW 6.13.070(2), as amended, would prevent the Bellevue Residence from being an asset of the estate so that the Trustee could avoid, recover, and preserve the IRS Liens for non-pecuniary penalties and interest on penalties for the benefit of the estate and its creditors, it violates the Supremacy Clause of the United States Constitution, Article VI, paragraph 2, and is void and unenforceable to that extent.

3. Determining that to the extent the Washington Homestead Act, as amended, including but not limited to RCW 6.13.070(2), as amended, would prevent the Bellevue Residence from being an asset of the estate so that the Trustee could avoid, recover, and preserve the IRS Liens for non-pecuniary penalties and interest on penalties for the benefit of the estate and its creditors, it violates the Uniformity Clause of the United States Constitution, Article I, Section 8, and is void and unenforceable to that extent.

4. Determining the extent, validity and priority of liens against the Bellevue Residence.

5. Avoiding the IRS Liens for non-pecuniary tax penalties and interest on penalties under 11 U.S.C. § 724(a) and allowing the Plaintiff to recover the avoided liens or their value from the IRS for the benefit of the estate and its creditors pursuant to 11 U.S.C. §§ 550 and 541(a)(3).

6. Avoiding the IRS Liens for non-pecuniary tax penalties and interest on penalties under 11 U.S.C. § 724(a) and automatically preserving the avoided liens pursuant to 11 U.S.C. §§ 551 and 541(a)(4).

7. Ordering that on sale of the Bellevue Residence, disbursement of proceeds attributable to the IRS Liens, other than those proceeds from liens avoided under 11 U.S.C. § 724(a) and recovered and preserved under 11 U.S.C. §§ 550 and 551, shall be made pursuant to 11 U.S.C. §724(b).

DATED this 19th day of February, 2022.

GROSHONG LAW PLLC

/s/ Geoffrey Groshong
Geoffrey Groshong
WSB No. 6124

Attorneys for Edmund J. Wood
Plaintiff / Trustee